

EPA Region 5 Records Ctr.



362866

200400022650
Filed for Record in
MONTGOMERY COUNTY, IL
SANDY LEITHEISER
11-05-2004 At 08:12 am.
MISCELANOUS 32.00
OR Book 1034 Page 151 - 157

Instrument Book Page
200400022650 OR 1034 151

ENVIRONMENTAL DEED RESTRICTION

THIS ENVIRONMENTAL DEED RESTRICTION, is made this 2nd day of November, 2004, by T.L. Diamond and Company Inc. ("Diamond") on the real property known as:

Tract 1: Part of the southeast quarter (SE $\frac{1}{4}$) of Section 1, Township 8 North, Range 4 West, Third Principal Meridian, Montgomery County, Illinois, described as follows:

Beginning at an iron pin found at the northeast corner of said S.E. $\frac{1}{4}$, Sec. 1, being at the intersection of two public roads, thence S 0 01' 03" W along the east line of the Section, also being along the center of Township Road 212 (T.R. 212), a distance of 495.06 feet to an iron pin; thence S 89 09' 03" W, 1757.88 feet to an iron pin; thence N 0 13' 38" W, 495.03 feet to an iron pin on the north line of said S.E. $\frac{1}{4}$, Section 1, also being on the centerline of Smith Road; thence N 89 09' 03" E along said north line and said road, a distance of 1759.99 feet to the point of beginning (P.O.B.) containing 20.00 acres, more or less.

Tract 2: Part of the southeast quarter (S.E. $\frac{1}{4}$) of Section 1 and the northeast quarter (NE $\frac{1}{4}$) of Section 12, Township 8 North, Range 4 West and part of the southwest quarter of Section 6, Township 8 North, Range 3 West, Third principal meridian, Montgomery County, Illinois, described as follows:

Commencing at an iron pin found at the northeast corner of said S.E. $\frac{1}{4}$, Sec. 1, thence S 0 01' 03" W along the east line of the section, being the centerline of Township Rd. 212 (T.R. 212), a distance of 495.06 feet for a point of beginning (P.O.B.) thence continuing along said line, S 0 01' 03" W, 825.75 feet to an iron pin; thence S 29 42' 23" E, 1067.63 feet to the centerline of the abandoned C.C.C. & St. L. R.R. (Conrail); thence S 52 17' 20" W along said centerline 129.14 feet to an iron pin set at the point of curvature of a 2 curve to the right of said railroad; thence continuing along the railroad centerline on a series of chords, with iron pins at each line change, the first chord being S 54 22' 13" W, 207.97 feet; thence S 59 26' 55" W 299.88 feet; thence S 65 27' 09" W, 299.78 feet; thence S 71 27' 00" W, 299.84 feet; thence S 77 26' 51" W, 299.81 feet; thence S 83 06' 41" W 266.85 feet; thence S 86

NOW, THEREFORE, the recitals set forth above are incorporated by reference as if fully set forth herein, and Diamond provides as follows:

Section One. Diamond does hereby establish this Environmental Deed Restriction on the real estate, situated in the County of Montgomery, State of Illinois and further described above.

Section Two. Diamond represents and warrants it is the current owner of the Property and has the authority to record this Environmental Deed Restriction on the chain of title for the Property with the Office of the Recorder or Registrar of Titles in Montgomery County, Illinois.

Section Three. The Property shall only be used for commercial and/or industrial activity, and shall not be used for any residences, hospitals, educational institutions, or day care centers. Notice to any person to whom Diamond sells or leases the Property or any portion of the Property of the restrictions outlined in this Environmental Deed Restriction shall be included in any document by which any portion of the Property is sold or leased.

All leases, grants, and other written transfers of any interest in the Property shall contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate, any of the conditions of this Environmental Deed Restriction.

Section Four. This Environmental Deed Restriction is binding on Diamond, its heirs, grantees, successors, assigns, transferees and any other owner, occupant, lessee, possessor or user of the Property or the holder of any portion thereof or interest therein during: (a) the period of their respective ownership, occupancy, lease, possession or use of the Property; and (b) thereafter, but only to the extent that they fail to include in all leases, grants, and other written transfers of any interest in the Property to which they are a party a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate, any of the conditions of this Environmental Deed Restriction. If, pursuant to a cleanup decision issued by U.S. EPA, the Property is remediated to a level consistent with residential use, and if that residential cleanup is approved by U.S. EPA, Diamond may remove this Environmental Deed Restriction upon written notice to U.S. EPA. Otherwise, the use restrictions shall continue in perpetuity until

and unless U.S. EPA approves a modification or rescission of the restrictions. U.S. EPA may modify or terminate, in whole or in part, the restrictions set forth in Section 3 in writing, as authorized by law. The owner of the Property may seek to modify or terminate, in whole or in part, the restrictions set forth in Section 3 by submitting to U.S. EPA, and, to Diamond if it is no longer the owner of the Property, a written application that identifies each such restriction to be terminated or modified, describes the terms of each proposed modification, and provides any proposed revisions to this notice and any proposed changes to the environmental easement and restrictive covenants applicable to the Property. Each application for termination or modification of any restriction set forth in Section 3 shall include a demonstration by the owner of the Property that the requested termination or modification will not interfere with, impair or reduce:

- a) the effectiveness of any remedial measures undertaken pursuant to the AOC;
- b) the long term protectiveness of the Remedial Action; or
- c) protection of human health and the environment.

If U.S. EPA, after appropriate consultation with Diamond, makes a determination that an application has made the demonstration required by this paragraph, U.S. EPA will notify the owner of the Property in writing. If U.S. EPA does not respond in writing within 90 days to an application to modify or terminate any restrictions, U.S. EPA shall be deemed to have denied owner's application. Any approved modification of the use restrictions shall not take effect until it is recorded with the Office of the Recorder or Registrar of Titles, Montgomery County, Illinois.

Section Five. The effective date of this Environmental Deed Restriction shall be the date that it is officially recorded in the chain of title for the Property to which it applies.

Section Six: Any request, notice or other communication to U.S. EPA or Diamond related to this Environmental Deed Restriction shall be delivered in writing to:

United State Environmental Protection Agency
Region 5
Superfund Division
77 West Jackson Blvd.
Chicago, Illinois 60604-3590
Attn.: Eagle Zinc Site Project Manager

T.L. Diamond & Company, Inc.
30 Rockefeller Plaza
28th Floor
New York, NY 10112

John M. Ix, Esq.
Dechert LLP
4000 Bell Atlantic Tower
1717 Arch Street
Philadelphia, PA 19103

WITNESS the following signatures on this 2nd day of November, 2004.

T.J. DIAMOND & COMPANY, INC.

By: Theodore Diamond
Theodore Diamond, President

STATE OF NEW YORK)
COUNTY OF NEW YORK)

) ss.

I, the undersigned, a Notary Public, in and for said County and State aforesaid, DO HEREBY CERTIFY, that THEODORE DIAMOND personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and Notary seal, this 2nd day of November A.D. 2004.



Marie H. La Marr
Notary Public

MARIE H. LA MARR
Notary Public, State of New York
No. 31-4896639
Qualified in New York County
Commission Expires 11/30/2005

PREPARED BY:
BARBARA ADAMS, ESQ.
ADAMS & WILSON, P. C.
109 SOUTH MAIN STREET
POST OFFICE BOX 38
HILLSBORO, IL 62049
217-532-2552



John M. lx
Direct Tel: (215) 994-2995
Direct Fax: (215) 855-2995
john.lx@dechert.com

November 17, 2004

BOSTON

BRUSSELS

CHARLOTTE

FRANKFURT

HARRISBURG

HARTFORD

LONDON

LUXEMBOURG

MUNICH

NEW YORK

NEWPORT BEACH

PALO ALTO

PARIS

PHILADELPHIA

PRINCETON

SAN FRANCISCO

WASHINGTON

VIA FACSIMILE & FIRST CLASS MAIL

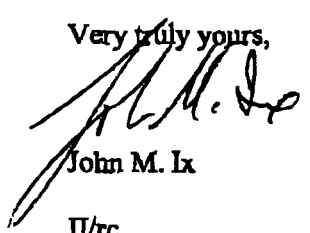
Thomas Krueger, Esq.
Multi-Media Branch II, Section I
United States Environmental Protection Agency
77 West Jackson Boulevard
Mail Code C14-J
Chicago, IL 60604

Re: Eagle Zinc Company Site
Hillsboro, Illinois

Dear Mr. Krueger:

Enclosed please find a copy of the Environmental Deed Restriction that was recorded for the subject property.

Very truly yours,


John M. lx

Jl/rc

Enclosure

1018292.1.PHI_BUSTAX_01 11/17/04 11:33 AM